

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
ESP WIRELESS TECHNOLOGIES GROUP, INC.) FCC File Nos. 0001262301, 0001276840
)
Petition for Reconsideration of Dismissal of)
Applications for Industrial/Business)
Pool Authorizations)

ORDER ON RECONSIDERATION

Adopted: December 17, 2003

Released: December 18, 2003

By the Acting Associate Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On September 17, 2003, ESP Wireless Technologies Group Inc. (ESP), submitted two requests¹ for reconsideration of the dismissal of the above-captioned applications to the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.² For the reasons set forth below, we dismiss ESP's petitions for reconsideration.

2. *Background.* On April 3, 2003, ESP filed a new application for authorization in the Industrial/Business radio service at Chicago, Illinois.³ Later, on the same date, a competing application was filed by A Beep LLC (A Beep).⁴ Subsequently, a separate applicant's units were cancelled from the Universal Licensing System (ULS), which freed up another eighteen units available on the same frequency. On April 14, 2003, ESP amended its application to increase the mobile unit count from fifty to sixty-eight. On June 13, 2003, the A Beep application for authorization for fifty units was granted under Call Sign WPXU787, Lockport, Illinois. On June 27, 2003, the Branch dismissed ESP's April 3 Application due to the frequency pair being fully loaded.⁵

¹ See Electronic mail message dated July 17, 2003 11:50am from Penni L. Welter, Spectrum Consultant, to Albert Knerr, FCC, Gettysburg, Pennsylvania; and electronic message dated July 17, 2003 11:57am from Penni L. Welter, Spectrum Consultant, to Albert Knerr, FCC, Gettysburg, Pennsylvania (collectively, "Petitions").

² The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, FCC 03-291, ¶ 2 (rel. Nov. 25, 2003).

³ FCC File No. 0001262301 (filed Apr. 3, 2003).

⁴ FCC File No. 0001262344 (filed Apr. 3, 2003).

⁵ Dismissal Letter, Ref. No. 2034665 (June 27, 2003). See 47 C.F.R. § 90.313.

3. On April 15, 2003, ESP filed a new application for authorization at the same location as its April 3 application on a different frequency in the Industrial/Business radio service.⁶ On June 26, 2003, the application was dismissed because the proposed location was less than sixty-four kilometers from fully-loaded Station WPTK537, Valparaiso, Indiana.⁷

4. In its petitions, ESP states that it was advised to amend its April 3 application to increase the unit count, and believes that its application was ahead of the A Beep application in the processing line and therefore should have been granted first. ESP also claims that its April 15 application was dismissed in error because the Station WPTK537 was a Special Temporary Authority (STA) and is not protected.

5. We dismiss ESP's petitions because they were not filed at the correct location. Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁸ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.⁹ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹⁰ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹¹ Accordingly, the plain language of the Commission's Rules indicates that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania, office is not properly filed.¹²

6. The petitions were never filed with the Office of the Secretary. Therefore, we find that the petitions were not timely filed in the proper location. Moreover, ESP did not request a waiver to file its

⁶ FCC File No. 0001276840 (filed Apr. 15, 2003).

⁷ Dismissal Letter, Ref. No. 2034666 (June 26, 2003). *See* 47 C.F.R. § 90.313.

⁸ 47 C.F.R. § 1.106(i).

⁹ 47 C.F.R. § 0.401.

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

¹² *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd.*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000). *See also* Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

petitions in Gettysburg, as opposed to filing them with the Office of the Secretary. Consequently, absent a waiver, we conclude that ESP's petitions should be dismissed as improperly filed.¹³

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by ESP Wireless Technologies Group, Incorporated on July 17, 2003, ARE DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Gregory F. Intoccia, Acting Associate Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹³ If we had considered the merits of ESP's petitions, we would have denied them. The ULS automatically processes applications in the order received. Pending applications that are amended prior to final processing lose their place in the original processing line. Therefore, the Branch correctly processed the A Beep application ahead of the amended ESP application. Regarding ESP's April 15 application, Section 90.313(a) requires consent agreements from all licenses sharing the channel, this includes STAs, although they operate on a secondary basis to other existing licenses. Consequently, the application was defective.